(ii) The indirect costs eligible for reimbursement pursuant to the United States Office of Management and Budget Circular A-87, provided that other indirect costs may be included pursuant to guidelines specified herein by the commissioner.

(e) For any non-state operated facility which elects to participate in the salary enhancement plan as evidenced by adoption of a resolution of its board of directors, effective on the later of October 1, 1987 or the date of adoption of such resolution, the direct care/support reimbursement will be adjusted as follows to reflect the obligation to pay salary levels established by adoption of the resolution referred to above. For non-state operated facilities, base period direct care/support salary costs shall be adjusted as follows:

(1) Regions I & II - $1825 per FTE (deflated to $1606 for 1984/85 base period) not to exceed a maximum of $16,359 per full time equivalent (FTE).

(2) Region III - $1625 per FTE (deflated to $1430 for 1984/85 base period) not to exceed a maximum of $16,359 per full time equivalent (FTE).

(3) The lower of the base period direct care/support salary costs, adjusted as stated above, or the direct care/support salary cost category standard as stated in subsection (f)(2)(i) and trended in accordance with subsection (c)(8)(v)(a), becomes the reimbursable amount for salary enhancement.

(4) In the absence of an election to participate in the salary enhancement plan no adjustment for salary enhancement will be made to the existing rate.

<u>(f) To encourage the closure of developmental centers, the commissioner [may] will consider proposals to allow the variable costs associated with the closed facility or facilities to become part of the operating expenses of new or existing state operated community facilities. The commissioner will allow a reasonable incentive plan for the reimbursement of the increased costs referred to above in the state operated community facilities if it is coupled with the closure of a developmental center. An incentive plan would provide for the reimbursement in total of increased costs in the state operated community facilities without adjustment or offsets.</u>

<u>(i) 100 percent reimbursement of the increased cost for at least one full rate period as defined by subsection (c)(2) but less than two full rate periods.</u>

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(ii) 75 [66] percent reimbursement of the increased cost for the second full rate period following the period defined in subsection (c)(8)(iv)(f)(1)(i).

(iii) 50 [33] percent reimbursement of the increased cost for the third full rate period.

(iv) 25 percent reimbursement of the increase cost for the fourth full rate period.

(2) Costs to be eligible for this incentive plan will include but not be limited to direct care, support and clinical personal service and fringe benefit amounts for employees whose most recent prior employment was at a closed or scheduled to close developmental center.

(i) In order to have the cost of former developmental center employee included in the incentive plan, the state operated facility applying for a rate adjustment pursuant to subsection (c)(8)(iv)(f) must hire such employee within twelve months of the official closing date of the developmental center.

(ii) Salaries and fringe benefit amounts paid to eligible employees by the facility cannot exceed the average salary and fringe benefit amount paid to comparable employees currently on that facility's payroll.

(iii) Any claim made under this provision is subject to audit as noted in section (e).

3 [(2)] Incentive plan applications from provider shall be made in writing to the commissioner.

(i) The application shall identify the employees, their job titles, salary levels, date hired and B/DDSO.

(ii) OMRDD may request such additional information as it deems necessary.

(v)(a) For all facilities of over 30 beds, except those developmental centers, OMRDD shall apply the trend factor as defined in section (c)(3)[(v)](vi) to a total reimbursable operating costs, with capital costs and start-up costs added to this result, to compute the final base year rate.

(g) To accelerate the closure and to encourage a reduction in the size of developmental centers, the commissioner will consider proposals to allow the variable costs associated with a developmental center to become part of the operating expenses of new and existing state operated community facilities. The variable costs associated with

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the developmental center will be allowed for the transition which is the period beginning on the date an official announcement to close a facility or facilities and ending on the date of actual closure. Also variable costs associated with the planned conversion of beds which is at least a 10 percent change in the facility census will be allowed. The commissioner will allow a reasonable incentive for the reimbursement of the increased costs referred to above in the state operated community facilities during the transition and/or conversion period. An incentive plan would provide for the reimbursement in total of increased costs in the state operated community facilities without adjustments or offsets.

(1) The commissioner will allow the following reimbursement for approved proposals:

(i) 75 percent reimbursement of the increased costs incurred during the transitional closure period. On the effective date of closure, reimbursement of increased costs will be considered under subsection (c)(8)(iv).

(ii) 75 percent reimbursement of the increased costs incurred during the conversion period. The conversion period will be for at least one full rate period as defined by subsection (c)(2) but less than two full rate periods. If during the conversion period, an official announcement of closure occurs, the reimbursement of increased costs may be considered under subsection (c)(8)(iv)(g)(1)(i).

(2) Costs to be eligible for this incentive plan will include but not be limited to direct care, support and clinical personal service and fringe benefit amounts for employees whose most recent prior employment was at a developmental center.

(i) In order to have the cost of former developmental center employee included in the incentive plan, the community facility applying for a rate adjustment pursuant to subsection (c)(8)(iv)(f) must hire such employee during the transitional and conversion periods.

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(ii) Salaries and fringe benefit amounts paid to eligible employees by the facility cannot exceed the average salary and fringe benefit amount paid to comparable employees currently on that facility's payroll.

(iii) Any claim made under this provision is subject to audit as noted in section (e).

(3) Incentive plan applications from the provider shall be filed in accordance with (c)(8)(iv)(f)(3).

Section (c) (8) (iv) (h)

(h) To encourage the closure of developmental centers, the commissioner will allow the net variable costs associated with the planned reduction of developmental center beds to become part of the operating costs of remaining developmental center beds. Net variable costs are total variable costs less the sum of that portion of the variable costs that become part of the operating costs of new state operated community facilities (as described earlier in this section at subsection (c)(8)(iv)(f) and subsection (c)(8)(iv)(g)) and the projected personal service attrition savings, as determined using historical attrition trends over the preceding three years, that occur at the developmental centers. The commissioner will allow reimbursement of these net variable costs as part of a plan to close the developmental centers. This incentive plan would provide for the reimbursement in total of net variable costs in the developmental centers without adjustment or offsets.

(1) For each rate period, the net variable cost will be calculated based on the number of reduced beds planned for that rate period. 100 percent reimbursement of the net variable cost will be allowed for that rate period.

Section (c) (8) (iv) (h)

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(2) Under this incentive plan eligible costs will be limited to personal service costs including fringe benefits and overhead and other than personal service costs excluding capital costs. Any claim made under this provision is subject to audit as noted in section (e).

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(b) For the developmental centers, the personal service costs including overhead shall be trended by that percentage which reflects the agreed to terms in the negotiated contracts between New York State and the representative bargaining units of the developmental center employees.

(1) The percentage used to trend personal service costs is developed by weighting all of the terms contained in the agreements negotiated between the State of New York and its employees.

(i) The weighting is accomplished by first grouping all the employees within the agency by negotiating unit. Then, the general salary increases, performance and increment advances, and any other amounts approved in the contracts are applied individually by employee within each of the respective negotiating units, to the salaries of a pay period from the fiscal year preceding the rate year.

(ii) The weighted personal services trend percentage is determined by dividing the total calculated rate year salaries for all negotiating units by the salaries of the preceding fiscal year.

(2) If a negotiated contract, or the negotiated contracts have not been agreed to at the time a rate is calculated, then the above mentioned costs shall be trended by the sum of the price movements of the wages, FICA, Fringe Residuals, and cost elements as set forth in §(c)(3)[(v)](vi)(a)-(c). Once the negotiated contract or contracts have been agreed upon the developmental center rate may be recalculated in accordance with §(c)(8)(v)(b) and (c) for the applicable rate period.

(c) For the developmental centers, the other than personal service costs, except for capital costs, shall be trended by the price movement of the OTPS cost element as defined in §(c)(3)[(v)](vi)(a). Capital costs shall not be trended.

(vi) For developmental centers, OMRDD shall recalculate the average developmental center rate, should a facility become decertified in order to make an appropriate prorated adjustment in the average developmental center rate.

(vii) For developmental centers, OMRDD shall recalculate the average developmental center rate as part of the volume variance adjustment, should a facility or unit projected to open, fail to open for any portion of the base or subsequent year that exceeds by one or more months the period for which the facility or unit had been projected to be open.

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(9) The OMRDD shall reduce a facility's reported costs, or estimated costs for rate calculation purposes, by the costs of such services and activities that are not chargeable to the care of the clients in accordance with §(c).

(i) In the event that the Commissioner determines that it is not practical to establish the costs of such services and activities, the gross revenues if any derived therefrom, shall be substituted as the basis for reductions of the facility's reported or estimated costs.

(ii) Examples of sources of such revenues include, but are not limited to:

(a) Supplies and drugs sold by the provider for use by non-residents;

(b) Telephone and telegraph services for which a charge is made;

(c) Discounts on purchases;

(d) Employee's rental of living quarters;

(e) Cafeterias;

(f) Meals provided to staff or a client's guests for which there is a charge;

(g) Operating parking facilities for community convenience; and

(h) Lease of office and other space by concessionaries providing services not related to intermediate care facility services.

(10) To be considered allowable, costs must be properly chargeable to necessary client care rendered in accordance with the requirements of Part 681 of 14 NYCRR.

(i) Except where specific rules concerning allowability of costs are stated herein, OMRDD shall use as its major determining factor in deciding on the allowability of costs, the Medicare Provider Reimbursement Manual, commonly referred to as HIM-15, published by the U.S. Department of Health and Human Services' Health Care Financing Administration (HCFA). The HIM-15 document is available from:

Health Care Financing Administration
Division of Communication Services
Production and Distribution Branch
Room 577, East High Rise Building
6325 Security Boulevard
Baltimore, Maryland 21207

(a) The Medicare Provider Reimbursement Manual may be reviewed in person during regular business hours at the:

(1) NYS Department of State, 99 Washington Avenue, Albany, New York 12231; or by appointment at the

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(2) NYS Office of Mental Retardation and Developmental Disabilities, Division of Revenue Management, 30 Russell Road, Albany, New York 12206.

(b) Where specific rules stated herein or in HIM-15 are silent concerning the allowability of costs, the commissioner shall determine allowability of costs based on reasonableness and relationship to client care and generally accepted accounting principles.

(ii) A monetary value assigned to services provided by a religious order and for services rendered by an owner and operator of a facility shall be considered allowable subject to review by OMRDD for reasonableness.

(iii) As determined by the Commissioner, expenses or portions of expenses reported by an individual facility that are not reasonably related to the efficient and economical provision of care in accordance with the requirements of Part 681 because of either the nature or amount of the item, shall not be allowed.

(iv) As determined by the Commissioner, costs which are not properly related to client care or treatment, and which principally afford diversion, entertainment or amusement to owners, operators or employees of the facility shall not be allowed.

(v) As determined by the Commissioner, costs for any interest expense related to funding expenses in excess of a facility's approved reimbursement rate, except to the extent permitted upon appeal, or for any penalty imposed by governmental agencies or courts or for the costs of insurance policies obtained solely to insure against such penalty shall not be allowed. OMRDD will not pay interest on the final dollar settlement resulting from the retrospective impact of rate appeals. OMRDD will not reimburse interest expense incurred to meet funded depreciation requirements, pursuant to §(c)(10)(x)(d) and (e); and (c)(12).

(vi) Costs of contributions or other payments to political parties, candidates, or organizations shall not be allowed.

(vii) As determined by the Commissioner, only that portion of the dues paid to any professional association which has been demonstrated to be attributable to expenditures other than for lobbying or political contributions shall be allowed.

(viii) Except as limited herein, below, any reasonable cost incidental to and including, the cost of the sale, purchase, alteration, construction, rehabilitation and/or renovation of a physical plant <u>or interest in real property manifested by cooperative shares</u> shall be considered allowable up to the amount approved by the Commissioner and the director of the Division of the Budget: